

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

QWEST CORPORATION,  
Plaintiff,  
v.  
CITY OF KENT,  
Defendant

No. C04-2216P

## ORDER

Having reviewed both parties' submission of proposed questions for certification to the Washington Supreme Court (Dkt. Nos. 24 &25), the Court finds that the following questions should be certified to the Supreme Court of Washington:

1. Does the term “aerial supporting structures” as used in RCW 35.99.060(3)(b) mean only
  - (a) the wide variety of telecommunications and electrical poles, glu-lams, “push-brace” poles, H-frames, towers and similar structures to which providers may attach their wires in order to suspend them in the air, or does it also include
  - (b) all other attachments and hardware that keep telephone wires in the air, including but not limited to strand, bolts, cross-arms, guy wires, brackets and other hardware associated with these items?
2. Where aerial to underground relocation of authorized facilities is required by a city or town under RCW 35.99.060(1), for service providers with an ownership share of the “aerial supporting structures,” is the city required to reimburse the full additional incremental cost of underground compared to aerial relocation or only the additional incremental cost proportionate to the percentage of “aerial supporting structures” owned by the service provider?

This case was filed as a declaratory judgment action and presents no factual disputes, but depends entirely on the questions of law cited above. The Clerk of Court is directed to submit to the Supreme Court of Washington certified copies of (a) this Order, (b) the Court's previous Order at docket number 23, which sets forth a brief factual background of this case, and (c) the docket in the above-captioned matter. The record so compiled contains all matters in the pending cause deemed material for consideration of the local law questions certified for answer.

The Plaintiff in this action is designated as the appellant and shall file the first brief before the Supreme Court of Washington. The parties are referred to state RAP 16.16 for additional information regarding procedure before the Supreme Court. The Clerk of Court shall notify the parties as soon as possible, but no more than three days, after the above-described record is filed in the Supreme Court of Washington.

The Clerk is directed to send copies of this order to all counsel of record.

Dated: February 8<sup>th</sup> , 2006

  
Marsha J. Pechman  
United States District Judge